IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Kanhaiyalal & Ors. vs. Smt. Shikha & Anr.

S.B.CR.MISC. PETITION NO.34/2004

against the order dt.13.10.2003 passed by Additonal Sessions Judge, Banswara in Cr.Revision No.12/2003.

DATE OF ORDER :: July 12, 2006

HON'BLE MR.H.R.PANWAR,J.

Mr. P.R.Mehta, for the petitioners.
Mr. Ashok Upadhyaya, P.P.
Mr. Mridul Jain, for the non-petitioner.

BY THE COURT:

By the instant criminal misc. petition under section 482 Cr.P.C., the petitioners have assailed the order dt. 13.10.2003 passed by Additional Sessions Judge, Banswara (for short 'the revisional court' hereinafter) in Cr. Revision No. 12/2003 whereby the revisional court dismissed the revision petition filed by the petitioner against the order dt. 29.9.2000 passed by Judicial Magistrate, Banswara (for short `the trial court' hereinafter), whereby the trial court clubbed two cases, one

instituted on the first information report lodged on 16.5.1998 for the offences under sections 323, 498-A and 406 I.P.C. against the accused except the present petitioners and the other on a complaint case filed by the complainant non-petitioner No.1 on 1.6.1998 against the present petitioners for the offences under sections 494, 494/109 and 113 I.P.C. Aggrieved by the orders passed by both the courts below, the petitioners have filed the instant criminal misc. petition.

I have heard learned counsel for the parties. Carefully gone through the first information report dt. 16.5.1998 lodged against Sanjay, Satyanarain, Smt. Pushpa, Jaswant Lal and Smt. Chameli.

On the first information report lodged on 16.5.1998, the matter was investigated by the police and the police filed the challan against the persons named in the first information report. The trial court took the cognizance of the offences against the persons charge-sheeted. On the complaint filed by non-petitioner No.1 on 1.6.1998, the trial court took the cognizance of offences by order dt. 29.9.2000 and clubbed the cases instituted on the police report as also on the complaint case. So far as taking cognizance of offnece on the complaint case is concerned, it is stated that that order was challenged but was

affirmed. However, the order taking cognizance is not under challenge by the instant petition.

The grievance of the petitioners is that since the police after investigation filed the challan in the case instituted on the police report and the trial court took the cognizance, the case instituted on a complaint cannot be clubbed with the case instituted subsequently on 1.6.1998 against the petitioners and in the police case, the petitioners were not the accused. The court below clubbed both the cases exercising the power under sub-section (2) of section 210 Cr.P.C.

Sub-section (2) of section 210 Cr.P.C. provides that if a report is made by the investigating police officer under Section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report. It appears that both the courts below erred in interpreting correctly the provisions of sub-section (2) of section 210 Cr.P.C. In the circumstances, therefore, the orders passed by the trial court and the revisional court are per se erroneous, illegal and perverse and as such cannot be allowed to stand. If the orders

impugned are allowed to stand, it would result in serious miscarriage of justice and manifest injustice. In the circumstances, therefore, the misc. petition deserves to be allowed.

Consequently, the misc. petition is allowed. Order dt. 29.9.2000 passed by the trial court clubbing two cases, one instituted on FIR and another on complaint and order dt. 13.10.2003 passed by the revisional court affirming the order dt. 29.9.2000 are hereby set aside. The trial court shall proceed with the case instituted on police report and on a complaint separately. The stay petition also stands disposed of.

[H.R.PANWAR],J.

m.asif/-